IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

Crl.MC.No. 588 of 2007()

ST.500/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, THAMARASSERY

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PETITIONER: ACCUSED

MAIMOONA MOIDEEN, S/O. MOIDEEN,
C/O. VADAKKERAROTH BALAN NAIR,
PERUVANCHERRY, NANMINDA.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT/STATE

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1. T.A.JOSE, S/O. ABRAHAM,
THAKIDIPURATH HOUSE, KAKKAD P.O., KOZHIKODE.

2. STATE, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB.
SRI.K.A.SALIL NARAYANAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 588 OF 2007

Dated this the 4th day of June, 2007

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the Negotiable Instruments Act. The trial is now at the stage of defence evidence. At that stage, the petitioner wanted the cheque in question to be sent to the handwriting expert. The application was described as one under Sec.73 of the Evidence Act. The learned Magistrate, by the impugned order, rejected the application. The petitioner claims to be aggrieved by the order. Notice of demand was not replied to. But it is the contention of the petitioner that it was not served or taken to her. The endorsement that the notice was refused by her is incorrect, she contends.

2. The crux of her contention is that she had taken the cheque book to the house of another. She had left the cheque book there. It had thus come into possession of one Khadeeja

from whom the complainant must have obtained the same. He is misusing the cheque with ulterior motive after so coming into possession of the blank signed cheque. This, in short, is the plea raised in defence.

3. The learned counsel for the complainant submits that the petitioner had belatedly come before this Court with the present request after the rejection of the prayer as per the order dated 9/1/07. Further witnesses were thereafter examined. The Bank Manager was examined. The specimen signature card was produced. Comparison was undertaken by the court. The evidence of the Manager was also made available. In these circumstances, there is no justification for the petitioner coming to this Court belatedly with such a prayer. The transparent attempt is to some how protract and prolong the proceedings.

4. I have anxiously considered the rival contentions. I shall carefully avoid the temptation to express any opinion on merits about the acceptability of the rival contentions. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this Court under Sec.482 of the Cr.P.C. It is the extraordinary inherent jurisdiction which is sought to be invoked. Such jurisdiction cannot be invoked, as a matter of

course. It is to be invoked only sparingly in exceptional cases that too only in aid of justice. Normally, interlocutory orders are not to be challenged during the pendency of the proceedings. They have to wait for the challenge along with the final orders to be passed in the prosecution. This policy of the law reflected clearly in Sec.397(2) of the Cr.P.C. where challenge against the interlocutory orders in revision is proscribed.

5. Having considered all the relevant inputs, I am of opinion that this is a fit case where the challenge against the impugned order must wait till the final disposal of the case. If necessary, the order has to be challenged at that stage. I am scrupulously avoiding any expression of opinion on merits, lest it would affect the rights of the parties.

6. With the above observations, this Crl.M.C. is dismissed.

(R. BASANT, JUDGE)

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